Supreme Court, U.S.
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ALEXANDER L. STEVAS
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 80, Original

THE STATE OF COLORADO,
Plaintiff

v.

THE STATE OF NEW MEXICO,
AND TONEY ANAYA,
ATTORNEY GENERAL OF THE STATE
OF NEW MEXICO,
Defendants.

RESPONSE TO MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

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Comes now the state of Colorado, through its attorney general, and responds to the motion for leave to file a brief as *amici curiae* filed by Kaiser Steel Corporation, Phelps Dodge Corporation, Vermejo Park Corporation, and the Vermejo Conservancy District.

The state of Colorado opposes the motion for leave to file a brief as *amici curiae*. As grounds therefor, the state of Colorado states:

1. The four entities which have sought leave to file a brief as *amici curiae* are represented by the state of New Mexico in this case under the principle of *parens patriae*. *New Jersey v. New York*, 345 U.S. 369 (1953); *see Environmental Defense Fund, Inc. v. Higginson*, 631 F.2d 738 (D.C. Cir. 1979).

2. The motion for leave to file a brief as *amici curiae* does not "set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties," as required by Rule 36.3 of the Revised Rules of this Court. Under the *parens patriae* principle, the state of New Mexico is presumed to represent adequately all of its citizens. *New Jersey v. New York, supra*. The four entities have not suggested that their representation by New Mexico is inadequate in any way.

3. The proposed brief of the *amici curiae* is repetitious. The brief of New Mexico in support of its exceptions to the report of the special master in this case, dated April 7, 1982, presents the same facts and legal arguments.

4. The state of Colorado has limited time to respond to the exceptions filed by New Mexico to the report of the special master and should not also be burdened with responding to the proposed brief submitted by the four New Mexico entities.

5. As further evidence that the four entities which seek leave to participate as *amici curiae* are adequately represented by New Mexico, the state of Colorado notes that Mr. Neil C. Stillinger, Esq., who is listed as "of counsel" on the proposed brief of the *amici curiae*, was appointed as a special assistant attorney general for the state of New Mexico for this case and participated at the hearings before the special master. *See* Appendix A.

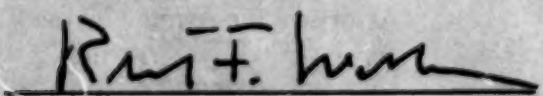
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert F. Welborn, hereby certify that I am counsel of record for the plaintiff and that on April 23, 1982, pursuant to Rule 28 of the Rules of the Supreme Court of the United States, I caused to be mailed the requisite number of copies of the foregoing Response to Motion for Leave to File Brief as *Amici Curiae*, by first class mail, postage prepaid, to the following:

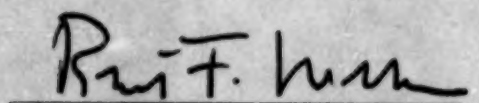
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APPENDIX A

PROCEEDINGS

THE COURT: The State of Colorado, Plaintiff, versus the State of New Mexico and others, Defendants. Is the Plaintiff ready?

MR. HAMBURG: We are ready, Your Honor.

THE COURT: Are the Defendants ready.

MR. SIMMS: Yes, sir.

THE COURT: Very well.

This is a hearing before the Special Master pursuant to an order of the Supreme Court. I think it would be well for the benefit of the reporter for the State of Colorado to announce its appearance, Mr. Hamburg.

MR. HAMBURG: My name is Donald H. Hamburg, Special Assistant Attorney General, with me is Robert Welborn, Special Assistant Attorney General, also at counsel table is Phillip Barber, Attorney for CF&I Corporation, and Mr. Duane Helton, he's our principal engineering expert witness, and also Mr. Dan Merriman who is also an engineering expert witness.

SPECIAL MASTER: Very well. New Mexico.

MR. SIMMS: I'm Richard Simms,

Special Assistant Attorney General, and Special Counsel to the New Mexico Interstate Stream Commission. Appearing with me Mr. Jay Stein, Special Assistant Attorney General, and a recently commissioned Special Assistant Attorney General, Mr. Neil Stillinger, also counsel for the Vermejo Conservancy District.

I would also like to introduce to Your Honor certain counsel in the audience. Mr. Paul Kastler, representing Kaiser Steel Corporation, Mr. Paul Eaton representing the Penzoil Corporation, and in particular, the Vermejo Park Corporation, and Burton Abker, and Gordon Absker representing Phelps Dodge.

With me is Phil Mutz, the chief engineer of the New Mexico Interstate Stream Commission.

SPECIAL MASTER: Very well. Do counsel wish to make an opening statement?

MR. HAMBURG: Yes, Your Honor.

SPECIAL MASTER: You are at liberty to do so.

MR. HAMBURG: May it please the Special Master. In order to obtain its fair share of the waters of the Vermejo River, the State of Colorado has brought this action for equitable